

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

This matter is before this Court upon Petitioner's "Affidavit in Opposition to the Government's Motion for Summary Judgment." Petitioner brought this action pursuant to 28 U.S.C. § 2255. Respondent filed a response and motion for summary judgment on September 22, 2005. Petitioner was sent an Order by this Court pursuant to *Roseboro v. Garrison*, 528 F2d 309 (4th Cir. 1975) on October 13, 2005, notifying him of the summary judgment procedure. Petitioner then filed his response in opposition to the Respondent's motion and a motion for evidentiary hearing on October 24, 2005. This Court then granted Respondent's motion for summary judgment and dismissed Petitioner's claim, by Order filed October 27, 2005. Petitioner subsequently filed the instant affidavit on October 31, 2005.

Petitioner brings this claim *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *See Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *See Boag v. MacDougal*, 454 U.S. 364, 365 (1982).

This Court has already granted Respondent's motion for summary judgment and dismissed Petitioner's claim. Petitioner's affidavit in opposition to Respondent's motion for summary judgment is therefore moot. Should Petitioner wish to contest this Court's prior Order of October 27, 2005, Petitioner's proper course of action is to file a Notice of Appeal and seek a Certificate of Appealability pursuant to 28 U.S.C. § 2253.

IT IS THEREFORE ORDERED that the Petitioner's "Affidavit in Opposition to the Government's Motion for Summary Judgment" be DISMISSED as moot.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina

November 2, 2005.

NOTICE OF RIGHT TO APPEAL

Plaintiff has the right to appeal this Order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified by Rule 4 of the Federal Rules of Appellate Procedure, will waive the right to appeal.